

VINCENT A. PEPPER
ROBERT F. CORAZZINI
PETER GUTMANN
JOHN F. GARZIGLIA
NEAL J. FRIEDMAN
ELLEN S. MANDELL
HOWARD J. BARR
LOUISE CYBULSKI E
JENNIFER L. RICHTER
L. CHARLES KELLER E
E NOT ADMITTED IN D.C.

PEPPER & CORAZZINI

L. L. P.

ATTORNEYS AT LAW

200 MONTGOMERY BUILDING

1776 K STREET, NORTHWEST

WASHINGTON, D. C. 20006

(202) 296-0600

ROBERT LEWIS THOMPSON

GREGG P. SKALL

E. THEODORE MALLYCK

OF COUNSEL

FREDERICK W. FORD

1909-1988

TELECOPIER (202) 296-5572

June 20, 1994

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
Washington, D.C. 20554

Re: Priority Communications, Inc.
"Comments On Further Notice Of Proposed Rulemaking"
CC Docket No. 92-115

Dear Mr. Caton:

Transmitted herewith on behalf of Priority Communications, Inc. ("Priority") are the original plus three microfiche plus five paper copies of its "Comments On Further Notice Of Proposed Rulemaking" in CC Docket No. 92-115.

This material is respectfully directed to the attention of the Commission.

Should any questions arise concerning this matter, please contact this office directly.

Very truly yours,

Ellen S. Mandell

Ellen S. Mandell
Attorney for Priority
Communications, Inc.

Enclosure

No. of Copies rec'd
List ABCDE

025

RECEIVED

JUN 20 1994

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED

JUN 20 1994

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)

Revision of Part 22 of)
the Commission's Rules)
Governing the Public)
Mobile Services)

CC Docket No. 92-115

To: The Commission

COMMENTS ON FURTHER NOTICE OF PROPOSED RULEMAKING

Priority Communications, Inc. ("Priority"), by its attorney and pursuant to Section 1.415(a) of the Commission's Rules, hereby submits its comments opposing that portion of the above-captioned Further Notice of Proposed Rulemaking ("FNPRM") which proposes new definitions for "initial applications" and "modification applications" in the context of 931 MHz paging. Priority respectfully submits that the rule proposed by the Commission in the FNPRM would not serve the public interest.

STANDING AND BACKGROUND

1. Priority is licensed to operate a wide-area paging system in the Public Land Mobile Service ("PLMS") on the frequency 931.2375 MHz in the state of Florida under the call signs KNKK600, KNKK605, KNKK608, KNKK612, KNKK620, KNKK624, KNKK635, and KNKK992. In addition, Priority is an applicant for co-channel base stations to improve its existing Florida system. Adoption of the proposed rule would limit Priority's flexibility to modify its system in response to changing circumstances. Accord-

ingly, Priority is an "interested" person for purposes of participating in this proceeding.

ARGUMENT

2. This proceeding was instituted two years ago, to completely overhaul Part 22 of the Commission's rules governing the PLMS. Revision of Part 22 of the Commission's Rules Governing The Public Mobile Services, CC Docket No. 92-115, "Notice of Proposed Rulemaking," 7 FCC Rcd 3658 (1992) ("NPRM"). The NPRM ran approximately 100 pages, and dozens of comments were filed. The Commission has now issued its FNPRM, which introduces, inter alia, proposed new definitions for "initial applications" and "modification applications" in the context of 931 MHz paging.

3. The Commission has not appended suggested language for this belated rule proposal. However, at paragraph 18 of the FNPRM the Commission states that it proposes to consider as an "initial" application: (1) an application anywhere on a new frequency; and (2) a proposal to locate a new facility more than two kilometers from any existing facility operating on the same frequency. The Commission further states that it proposes to consider as a "modification" application: (1) an application proposing new locations two kilometers or less from a previously authorized and fully operational base station licensed to the same licensee operating on the same frequency; or (2) an application for a change of location within two kilometers of an exist-

ing station licensed to the same licensee on the same frequency; or (3) an application proposing a technical change that would not increase the service contour.

4. Priority opposes the portions of these definitions (a) that would define as "modifications" only those proposals for facilities that are within two kilometers of an existing co-channel base station, and treat all others as "initial" applications; and (b) that would treat all applications proposing any service contour increase as "initial" applications, even where there would be no increase in the exterior perimeter of the total system. As shown below, these definitions are overly restrictive and counter-productive.

A. Two kilometer margin for modifications is overly restrictive.

5. Under the current 931 MHz licensing system, the Commission assumes that the typical, "Class L" 931 MHz station has a 20-mile reliable service area contour ("RSAC") and a 50-mile interference contour ("IC"). Rule Section 22.504(b)(2). Consistent with these assumptions, the Commission has established a minimum separation distance of 70 miles between Class L 931 MHz base stations which are not operated as part of a common system. Rule Section 22.503(d). See also FNPRM at paragraph 13. Thus, authorized 931 MHz base stations are protected from the filing of conflicting applications for a radius of 70 miles; mutually

exclusive proposals may not be located any closer. FNPRM at n.26.

6. Based on the assumption of a 20-mile RSAC for 931 MHz base stations, the Commission historically has deemed proposals for additional co-channel 931 MHz transmitters within 40 miles of existing facilities to be considered expansion proposals. Thus, under Rule Section 22.525(b), a 931 MHz application will be considered as seeking an additional frequency for purposes of the "one initial channel policy" if its proposed base station is within 40 miles of its existing 900 MHz base station. Similarly, under Rule Section 22.33(c)(1), which articulates the circumstances in which an applicant may request resolution of mutual exclusivity by hearing rather than lottery, a proposed transmitter within 40 miles of an existing co-channel transmitter is considered an expansion application. In each circumstance, 40 miles demarcates the outer bounds at which a new co-channel transmitter will be considered to modify an existing system for expansion purposes.

7. The existing policy should be continued. The policy is rationally grounded on the fundamental assumption that Class L 931 MHz transmitters have a 20-mile RSAC, and recognition of a fixed interference protection zone that blocks the filing of mutually exclusive applications for 70 miles. On the other hand, the Commission does not articulate in the FNPRM any technical

basis for classifying as "initial" applications for additional co-channel transmitters at distances of more than two kilometers.

8. The proposed two kilometer restriction will be a road-block to development of wide-area 931 MHz paging systems. Rational expansion of existing systems will be slowed inordinately, impeding carriers from introducing service in demographically-related areas in response to customer needs. In addition, the proposal will impede introduction of new technologies which promise to maximize efficient use of spectrum by increasing capacity, but which require the addition of intercessory co-channel transmitters (generally at distances of greater than two kilometers of existing system transmitters).

9. Expansion costs will increase 20-fold, and will likely be passed along in the form of increased costs for service. The cost to subscribers for receiving equipment also likely would be increased. The Commission has recognized that paging frequencies are not fungible for expansion purposes; in order for a paging carrier to efficiently and economically expand its coverage area, a common frequency must be used. Lottery Selection Among Applicants, 57 RR 2d 427, 437 (1984). Thus, should a carrier be blocked from co-channel expansion beyond the two-kilometer limit, subscribers requiring service in the additional areas will be constrained to obtain either more than one pager or a more expensive dual-frequency pager.

10. The ability of carriers to make involuntary modifications to systems also would be hampered. For instance, should a carrier lose a transmitter site due to circumstances beyond its control, relocation could become an onerous and risky undertaking where, for instance, there are no suitable alternative sites within two kilometers.

11. For these reasons, the Commission should continue to consider applications, for co-channel 931 MHz transmitters up to 40 miles from existing transmitters, to be "modifications."

B. Restriction on service area increases is overly broad.

12. Many PLMS systems, including Priority's Florida system, are wide-area systems, enabling subscribers to receive pages over an extended service area. Wide-area systems generally are comprised of at least two (but usually more) proximate co-channel transmitters, which are simultaneously keyed to simulcast a message throughout the entire system at the same time. Multiple-site wide-area systems generally are comprised of exterior sites, which define the perimeter of the system, and interior sites, located within the interior of the system and not bordering on the system's perimeter.

13. Sometimes there are small service area gaps in the interior of a wide-area system. These gaps usually result from the real world difficulties in locating suitable transmitter

sites perfectly spaced at 40 mile intervals.^{1/} These gap areas generally are not subject to mutually exclusive applications, because they are within the 70-mile protection radius accorded 931 MHz stations. Rule Section 22.503(d).


14. Under the circumstances, proposals which seek to expand the service area of an existing station by adding interior transmitters should be deemed "modifications."^{2/}

WHEREFORE, the premises considered, Priority Communications, Inc., respectfully submits that the Commission should define "initial" and "modification" applications in the 931 MHz band in accordance with the foregoing.

Respectfully submitted,

PRIORITY COMMUNICATIONS, INC.

By


Ellen S. Mandell
Its Attorney

PEPPER & CORASSINI, L.L.P.
200 Montgomery Building
1776 K Street, N.W., Suite 200
Washington, D.C. 20006
(202) 296-0600
June 20, 1994

^{1/}As noted at paragraph 5, infra, the Commission assumes that a Class L 931 MHz station has a 20-miles RSAC.

^{2/}Consistent with paragraphs 5 to 10, infra, proposals which seek to expand the perimeter of a wide-area system up to 40 miles also should continue to be deemed "modifications."

CERTIFICATE OF SERVICE

I, Veronica Pierce, do hereby certify that on this 20th day of June, 1994, I sent copies of the foregoing document via first class mail, postage prepaid, to the following:

- * The Honorable Reed E. Hundt, Chairman
Federal Communications Commission
1919 M Street, N.W. Room 814
STOP CODE 0101
Washington, D.C. 20554
- * James H. Quello, Commissioner
Federal Communications Commission
1919 M Street, N.W. Room 802
STOP CODE 0106
Washington, D.C. 20554
- * Susan Ness, Commissioner
Federal Communications Commission
1919 M Street, N.W. Room 832
STOP CODE 0104
Washington, D.C. 20554
- * Andrew C. Barrett, Commissioner
Federal Communications Commission
1919 M Street, N.W. Room 826
STOP CODE 0103
Washington, D.C. 20554
- * Rachelle Chong, Commissioner
Federal Communications Commission
1919 M Street, N.W. Room 844
STOP CODE 0105
Washington, D.C. 20554
- * Richard Metzger, Chief
Federal Communications Commission
1919 M Street, N.W. Room 500
STOP CODE 1600
Washington, D.C. 20554
- * John Cimko, Jr., Chief
Common Carrier Bureau
Mobile Services Division
Federal Communications Commission
1919 M Street, N.W. Room 644
STOP CODE 1600D
Washington, D.C. 20554
- * William Kennard, Esq.
General Counsel

Federal Communications Commission
Room 614
1919 M Street, N.W.
Washington, D.C. 20554

Carolyn C. Hill, Esq.
ALLTEL Service Corporation
1710 Rhode Island Avenue, N.W.
Suite 1000
Washington, D.C. 20036

Cleve Watkins
Vice President, Technology
The Antenna Specialists Company
30500 Bruce Industrial Parkway
Cleveland, OH 44139

Eliot J. Greenwald, Esq.
Fisher, Wayland, Cooper & Leader
1255 23rd Street, N.W.
Suite 800
Washington, D.C. 20037

John T. Scott III, Esq.
Crowell & Moring
1001 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

William B. Barfield, Esq.
BellSouth Corporation
1155 Peachtree Street, N.E.
Suite 1800
Atlanta, Georgia 30367-6000

Richard L. Biby, Esq.
Communications Engineering Services, P.C.
6105-G Arlington Blvd.
Falls Church, VA 22044

Michael Altschul, Esq.
Cellular Telecommunications Industry Association
1133 21st Street, N.W.
Suite 300
Washington, D.C. 20036

Carl W. Northrop, Esq.
Bryan Cave
700 13th Street, N.W.
Washington, D.C. 20005-3960

Kevin C. Gallagher, Esq.
Centel Cellular Company
8725 West Higgins Road
Suite 330
Chicago, IL 60631

Tom W. Davidson, Esq.
Akin, Gump, Hauer & Feld, L.L.P.
1333 New Hampshire Avenue, N.W.
Suite 400
Washington, DC 20036

Dr. George L. Schrenk
Comp Comm, Inc.
900 Haddon Avenue, 4th Floor
Collingswood, NJ 08108

Louis R. du Treil, Esq.
du Treil, Lundin & Rackley, Inc.
1019 19th Street, N.W., 3rd Floor
Washington, DC 20036

Daniel L. Bart, Esq.
GTE Corporation
1850 M Street, N.W., Suite 1200
Washington, DC 20036

Benjamin F. Dawson III, P.E.
Hatfield & Dawson, Consulting
Engineers, Inc.
4226 6th Avenue, N.W.
Seattle, WA 98107-5021

Jack Taylor, Esq.
International Mobile Machines
Corp.
6116 Brassie Way
Redding, CA 96003

Frederick M. Joyce, Esq.
Joyce & Jacobs
2300 M Street, N.W., 8th Floor
Washington, DC 20037

Mark R. Hamilton, Esq.
Cathleen A. Massey, Esq.
McCaw Cellular Communications, Inc.
1250 Connecticut Avenue, N.W.
Suite 401
Washington, DC 20036

Harry L. Brock, Esq.
Metrocall of Delaware, Inc.
4041 Powder Mill Road, Suite 103
Beltsville, MD 20705

Thomas J. Casey, Esq.
Skadden, Arps, Slate, Meagher
& Flom
1440 New York Avenue, N.W.
Washington, DC 20005

Edward R. Wholl, Esq.
NYNEX Mobile Communications
Company
2000 Corporate Drive
Orangeburg, NY 10962

Lucille M. Mates, Esq.
Pacific Bell/Nevada Bell
140 New Montgomery Street
Room 1526
San Francisco, CA 94105

Michael W. Mowery, Esq.
PacTel Cellular
2999 Oak Road, MS 800
Walnut Creek, CA 94596

James F. Rogers, Esq.
Latham & Watkins
1001 Pennsylvania Avenue, N.W.
Suite 1300
Washington, DC 20004

Judith St. Ledger-Roty, Esq.
Reed Smith Shaw & McClay
1200 18th Street, N.W.
Washington, DC 20036

Arthur K. Peters, P.E.
Consulting Engineers
7020 N.W., 11th Place
Gainesville, FL 32605

Robert M. Jackson, Esq.
Blooston, Mordkofsky, Jackson
& Dickens
2120 L Street, N.W., Suite 300
Washington, DC 20037

Harold Mordkofsky
Blooston, Mordkofsky, Jackson
& Dickens
2120 L Street, N.W., Suite 300
Washington, DC 20037

Richard S. Rodin, Esq.
Hogan & Hartson
555 Thirteenth Street, N.W.
Washington, DC 20004-1109

Thomas Gutierrez, Esq.
Lukas, McGowan, Nace &
Gutierrez, Chartered
1819 H Street, N.W., 7th Floor
Washington, DC 20006

Thomas P. Kerester, Esq.
U.S. Small Business Administration
409 3rd Street, S.W.
Washington, DC 20416

William J. Franklin, Esq.
William J. Franklin, Chartered
1919 Pennsylvania Ave., N.W.
Suite 300
Washington, D.C. 20006-3404

Rodney L. Joyce, Esq.
Ginsburg, Feldman & Bress,
Chartered
1250 Connecticut Avenue, N.W.
Washington, DC 20036

James D. Ellis, Esq.
Southwestern Bell Corporation
One Bell Center, Rm. 3524
St. Louis, MO 63101-3099

R. Michael Senkowski, Esq.
Wiley, Rein & Fielding
1776 K Street, N.W.
Washington, DC 20006

Martin T. McCue, Esq.
U.S. Telephone Association
900 19th Street, N.W., Suite 800
Washington, D.C. 20006-2105

Leon T. Knauer, Esq.
Wilkinson, Barker, Knauer & Quinn
1735 New York Ave., N.W.
Washington, D.C. 20006

Richard C. Rowlenon, Esq.
Vanguard Cellular Systems, Inc.
2002 Pisgah Church Road
Suite 300
Greensboro, NC 27408


Veronica Pierce

* By Hand

DOCUMENT OFF-LINE

This page has been substituted for one of the following:

- o An oversize page or document (such as a map) which was too large to be scanned into the RIPS system.

- ~~o Microfilm~~, microform, certain photographs or videotape.

- o Other materials which, for one reason or another, could not be scanned into the RIPS system.

The actual document, page(s) or materials may be reviewed by contacting an Information Technician. Please note the applicable docket or rulemaking number, document type and any other relevant information about the document in order to ensure speedy retrieval by the Information Technician.